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D.B. CIVIL SPECIAL APPEAL NO.300/2006.
[SHRI NAGRIK SHIKSHA SAMITI, BIKANER & ORS. VS. KISHAN LAL SONI & ORS.]
DATED : 01.03.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr.S.N.Trivedi for the appellant.
Mr.A.K.Rajvanshi for the respondent.

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Heard learned counsel for the parties. We are satisfied that in the present case after recording the finding that the order of the Tribunal was wholly without jurisdiction really speaking nothing remained to be decided in the writ petition, as a matter of fact, the order of compulsory retirement passed in exercise of power under proviso [3] to Section 16 of the Act of 1988 cannot be infructuate because of the non-formation of the Rules if the procedure adopted is a fair one there is same material having nexus with formation of satisfaction by the employer about not continuing with employer-employee relationship any more after stage for such consideration as reached.

Order of compulsory retirement cannot be interfered with by the Appellate Tribunal as it being

a marginal function and founded on existing material. The order of the compulsory retirement permissible under law was prima facie not liable to be quashed for want of jurisdiction. Question also arise for consideration in the present case employment of the respondent is under the private educational institution, which undoubtedly cannot be equated with a civil service under State or instrumentality of the State and not governed by the Article 311 of the Constitution. The contract of employment being primarily between the private employer and employee, whether against illegal termination a reinstatement can at all be granted when under the Specific Relief Act, specific performance of such contract is barred. The petitioner's services are not governed by the Industrial Disputes Act.

Without examining all these issues the finding about the order being wholly without jurisdiction was uncalled for and the vacation of the interim order founded on that ground alone was not justified.

We, therefore, are of the opinion that the operation of the order of the Tribunal under challenge granting reinstatement ought to remain stayed until final decision of the writ petition inasmuch as while the petitioner is otherwise entitled to retiral benefits, and is not left unprovided. The employer would be remediless with sufferage of a person in whom they have lost confidence, if he succeeds.

Accordingly, the special appeal is allowed and the order under appeal is set aside. The operation of the order of the Tribunal in challenged under the writ petition is stayed until the final decision of the writ petition.

There shall be no orders as to costs.

[CHATRA RAM JAT]J. [RAJESH BALIA], J.

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